

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

LYNN ROWELL, et al.

*Plaintiffs,*

v.

KEN PAXTON, in his official capacity as  
Attorney General of the State of Texas,

*Defendant.*

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Civil Action No. 1:14-cv-000190-LY

**CORRECTED PLAINTIFFS' STATEMENT OF UNDISPUTED MATERIAL FACTS**

1. The plaintiffs in this case are Lynn Rowell, Paula Cook, and Shonda Townsley, Texas merchants who accept credit cards for payment, as well as their respective businesses, Beaumont Greenery, Montgomery Chandler, Inc., and Townsley Designs, LLC. *See* App. 114–23.
2. The defendant in this case is Texas Attorney General Ken Paxton, who is responsible for enforcing the laws of the State of Texas.
3. In 1985, Texas enacted a law prohibiting Texas merchants from charging more to credit card users than cash users and labeling that difference a “surcharge” on credit cards. *See* Tex. Bus. & Comm. Code § 604A.0021.
4. Plaintiff Lynn Rowell “would like to tell our customers that there is a ‘surcharge’ if they pay with a credit card and ‘no additional charge’ if they pay with cash or check.” App. 115–16.
5. Plaintiff Paula Cook “would like to tell our customers that there will be an extra charge if they pay with a credit card, but not if they pay with a debit card, cash, or check.” App. 119.

6. Plaintiff Shonda Townsley “would like to tell our clients that there is a ‘surcharge’ if they pay with a credit card, but no extra charge if they pay by cash, check, or wire transfer.” App. 122.
7. In *Expressions Hair Design v. Schneiderman*, the Supreme Court of the United States held that laws like Texas’s regulate speech, and therefore are subject to First Amendment scrutiny. 137 S. Ct. 1144, (2017).
8. In *Italian Colors Rest. v. Becerra*, the Ninth Circuit applied First Amendment scrutiny to California’s no-surcharge law and held that it was unconstitutional as applied to the merchant plaintiffs in that case. 878 F.3d 1165 (9th Cir. 2018).
9. California’s no-surcharge law is not materially different from Texas’s no-surcharge law. *Compare* Tex. Bus. & Comm. Code § 604A.0021 *with* Cal. Civ. Code § 1748.1.
10. The speech that the plaintiffs in this case wish to engage in is not meaningfully distinguishable from the speech the plaintiffs in *Italian Colors* wished to engage in. *Compare* App. 114–23 *with* 878 F.3d at 1173 (“[A]ll plaintiffs wish to post a single sticker price and then charge an extra fee for credit card users.”).
11. In *Dana’s Railroad Supply v. Attorney General, Florida*, the Eleventh Circuit applied First Amendment scrutiny to Florida’s no-surcharge law and held that it was unconstitutional as applied to the merchant plaintiffs in that case. 807 F.3d 1237 (11th Cir. 2015).
12. Florida’s no-surcharge law is not materially different from Texas’s no-surcharge law. *Compare* Tex. Bus. & Comm. Code § 604A.0021 *with* Fla. Stat. Ann. § 501.0117.
13. The speech that the plaintiffs in this case wish to engage in is not meaningfully distinguishable from the speech the plaintiffs in *Dana’s Railroad Supply* wished to engage in. *Compare* App. 114–23 *with* 807 F.3d at 1240 (“[T]he businesses wish to call the price difference a credit-card *surcharge* rather than a cash *discount*.” (emphasis in original)).

Respectfully submitted,

/s/ Deepak Gupta

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February 1, 2018

**CERTIFICATE OF SERVICE**

I hereby certify that on February 1, 2018, I electronically filed the foregoing corrected statement with the Clerk of the Court using the CM/ECF system. All participants are registered CM/ECF users, and will be served by the CM/ECF system.

/s/ Deepak Gupta  
Deepak Gupta